

### **REMARKS**

Claims 1-25, 29-48 and 51-87 were pending in the Office Action. Upon entry of the present paper, claims 84-87 are amended.

The following objections and rejections were made in the Office Action:

- Claims 84-88 were rejected under 35 U.S.C. 101 as being directed to non-patentable subject matter
- claims 1-11, 21-23, 33-35, 42-44, 46-58, 67-69, 76-68 and 84-87 stand rejected under 35 U.S.C. 103(a) as being unpatentable over DIG35 Specification Metadata for Digital Images version 1.0, by Digital Imaging Group, Inc. (“DIG”) in view of Balabanovic et al. (U.S. Patent N. 6,976,229); and
- claims 12-20, 24-24, 29-32, 36-41, 45, 59-66, 70-75 and 79-83 stand rejected under 35 U.S.C. 103(a) as being unpatentable over an alleged three-way combination of DIG, Balabanovic et al. and Delorme et al. (U.S. Patent No. 6,321,158)

Applicant respectfully traverses these rejections.

### **The Rejection Under 35 U.S.C. 101**

Turning first to the rejection of claims 84-88, Applicant has amended these claims to recite a “tangible” computer readable medium ..., which is believed to obviate the rejection.

**The Rejections Under 35 U.S.C. 103**

A rejection on obviousness grounds must account for all limitations, and it must be supported by some articulated reasoning with a rational underpinning – it must make sense. See, e.g., MPEP 2143.03 (All Claim Limitations Must Be Considered); and KSR Int'l v. Teleflex, Inc., 550 US 398, 82 USPQ2d 1385, 1396 (2007). In the instant cast, Applicant respectfully submits that the Office's alleged modification of the DIG reference still omits claim features, and lacks the required rational underpinning.

All of the pending independent claims (1, 41, 42, 45, 46 and 84) recite language regarding displaying a version of an image with and without a visual effect, or an image and an altered version of the image, in a predetermined time sequence. The Office relies on DIG for this “predetermined time sequence,” citing again the figure at page 11 of the DIG reference, but what is the predetermined time sequence there? “Time” is only mentioned once on that page, and does not refer to the recited display.

Furthermore, the DIG reference does not appear to discuss displaying the raw image without the “effects” in any sort of sequence, let alone a predetermined time sequence. To elaborate, it appears that the Office is making the following allegations: (a) the metadata mentioned in this figure could be instructions for cropping, rotating or otherwise transforming the basic image data ("pixels"); (b) the page 11 figure shows the display of the image without any rotation, cropping, transformation etc. based on the metadata; and (c) it would have been obvious to have then displayed the modified image (i.e. with rotation etc. based on the metadata) in a predetermined time sequence.

Even if the Office is right about (a), there does not appear to be any evidence at the cited sections to support the allegation that the page 11 figure teaches displaying the

image without the rotation etc. specified in the metadata. Indeed, it is not clear why the Office assumes that figure 11 teaches displaying the raw image at all, since the raw image data is accompanied by instructions (metadata) as to how the image should actually be displayed, and there is nothing in the reference to suggest that that metadata is ignored during display. If the metadata is supposed to include information about modifying (rotation etc.) the image, then it would appear to follow that the image data is intended to be displayed with those modifications based on the metadata, and that there is no display of the raw image without the modification.

Furthermore, even if it is supposed for the sake of argument that figure 11 does teach displaying the raw image and that the user might have the option to switch from the raw image to the image as modified according to the metadata, there still is no evidence to suggest that this would be displayed in the recited “predetermined time sequence.”

The Office has also made specific reference to page 152 of the DIG reference, but it is not clear why the Office considers this section to be relevant. The portion mentions how renaming an image file might lead to a breakdown in the link between the image file and the metadata, but Applicant does not understand how it follows that this is a disclosure of displaying in a predetermined time sequence the image with and without any modification based on the metadata. If as mentioned at the cited page 152, the link between the image file and the metadata is lost during transmission of a file, it would appear to follow that the image could only be displayed at the receiving end without any modification based on the metadata (and not also with the modification).

The newly-cited Balabanovic et al. does not overcome this deficiency. The Office cites Balabanovic et al., citing col. 5, lines 5- -62, but that cited portion merely discusses

doing a search to list images matching a criteria, with no mention of the recited display in a predetermined time sequence.

**Conclusion**

For at least the foregoing reasons, the pending claims are believed to distinguish over the applied references. If, however, the Examiner feels that additional discussion and/or amendment would be helpful, the Examiner is invited to telephone the Applicants' undersigned representative at the number appearing below.

Respectfully submitted,

Date: May 26, 2009

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